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6-1-2010

Technical Bulletins: Physical Fitness in Public Safety (2010)

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Recommended Citation

Darden, Don, "Technical Bulletins: Physical Fitness in Public Safety (2010)" (2010). *MTAS Publications: Technical Bulletins*.

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PHYSICAL FITNESS IN PUBLIC SAFETY

Don Darden, Municipal Management Consultant

INTRODUCTION

Cities are not required by federal or state laws to administer pre-employment medical examinations or physical ability tests for firefighters or police officers. Even the Occupational Safety and Health Administration Respiratory Protection Standard does not require a complete medical examination for firefighters. This test determines a firefighter's ability to use a respirator. Cities may apparently administer medical examinations or physical ability tests so long as the tests do not have an adverse impact on a protected class (42 U.S.C., Section 2000 e-(h)). A protected class would be persons protected by the Federal Civil Rights Act by virtue of their age, race, color, religion, sex, or national origin or the Americans with Disabilities Act.

PHYSICAL AGILITY VERSUS PHYSICAL ABILITY

The terms physical ability and physical agility are commonly used interchangeably. *Webster's Dictionary* defines agile, or agility, as being able to move quickly and easily; nimble; mentally alert. Physical ability, on the other hand, is defined as the physical, mental, financial, or legal power to perform; a natural or acquired skill or talent. This report uses physical ability in conjunction with physical fitness for a firefighter and physical agility for testing police officers, where moving quickly or easily may be more job task related.

THE NEED FOR PHYSICAL ABILITY TESTING

Physical fitness in public safety is becoming an increasing concern for city governments. Much of a police and firefighter's shift is filled with driving, report writing, and other duties that do not routinely require a great deal of physical exercise. In emergency situations the sedentary work environment of the officer changes immediately to one of high stress, requiring tremendous physical exertion that often results in exhaustion. In a Tennessee city, a highly respected police officer suffered a fatal heart attack while engaging in foot pursuit of a suspect. This incident is not unique to that city and should make all cities more aware of the need to protect the public safety as well as the lives of police and firefighters.

Physical ability is important for officers because they need sufficient strength, endurance and aerobic capacity. Many studies have shown that the more physically fit officers are and feel, the more self-assured and happy they are with themselves. By continuing a physical training program, an officer can sustain job enthusiasm, improved self-control and total performance. Pre-employment health screening reduces new hire injuries by as much as one-third. It is estimated that current employee health screening also results in a one-third reduction in injuries. While a city's primary concern should always be the health and safety of the public and the firefighter or police officer, policies that can significantly reduce worker's compensation claims and expense should also be of great concern for cities.

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Police. T.C.A. § 38-8-106 sets forth the basic qualifications for police officers. One of the qualifications is that the person employed as a police officer has passed a physical examination by a licensed physician. Statutes do not explicitly state that police officers maintain their physical ability while serving as a police officer. It is, therefore, not uncommon in Tennessee cities to have an officer take a physical examination as part of a pre-employment job offer and not take another physical examination for the remainder of his/her career.

It can be argued that an officer who commits a felony loses his qualification as a police officer and that an officer who has a mental disorder also loses his/her qualification. Why then would the officer not lose his qualification by becoming physically unfit?

Physical exercise has been medically proven to be beneficial for the human body, and especially for one who is in a stressful occupation. Exercise helps to alleviate stress by venting feelings of anxiety and frustration. Exercise also fatigues the body so that sleep is easier and deeper, which helps to alleviate stress. Through exercise, stress is diminished and the officer's chance of suffering from hypertension and other coronary diseases is reduced.

If physical ability is beneficial, why then do most police departments shy away from physical examinations as a means of determining fitness? There are at least four reasons for this reluctance: (1) the governing board feels that periodic medical examinations and/or physical ability training is too expensive; (2) many city councils/boards have simply not required their officers to maintain their physical ability to do the job; (3) officers with lengthy service

records sometimes feel that physical ability programs are an effort to purge the department of the "old timers"; and (4) it is very difficult to develop ability tests that are fair and that are job related.

Fire. Ray Crouch, fire management consultant with the UT Municipal Technical Advisory Service (MTAS), has noted that one of the biggest problems in fire service today is that in too many instances firefighters are allowed to remain on the job even when they are medically and physically unable to perform the essential functions of the job. The same can be said for police officers who may be physically unable to perform the essential functions of their jobs.

It should be a matter of public policy that every police and fire department takes appropriate measures to significantly reduce deaths that may be related to stressful occupations. It also should be obvious to every local government decision maker that a physically able officer is the best way to protect the health and safety of the public and the life of the officer sworn to carry out his public safety responsibilities. Let us take a look at the reluctance of many cities to deal with physical ability for police and firefighters.

EXPENSE

Unfortunately many local decision makers look at the expense of physical ability testing in terms of the number of police and firefighters serving the city times the individual cost of administering a medical examination. A police department with 20 officers times \$300 each for medical examinations represents an expenditure of \$6,000 annually, and an equal number of firefighters would represent another \$6,000 annually, for a total of \$12,000 for medical

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examinations. It is “penny wise and pound foolish” to view this expense as \$12,000 for the examinations and no cost for not administering the examinations. The long-term cost for not administering the examinations may be added expense for insurance premiums, adverse court decisions costing much more than the cost of administering tests, increased worker’s compensation, increased overtime pay, and perhaps long term disability or death of its valuable employees.

PHYSICAL FITNESS AND TRAINING AS AN EFFORT TO PURGE THE DEPARTMENTS OF OLD TIMERS

Officers with lengthy service often express the opinion that a physical ability program is nothing more than an effort to replace the old timers with younger officers. This criticism may be well founded in some cities, when a local council member begins to look around and notices fit and trim young officers as well as older officers, who may be overweight and exhibit a sedentary life style. A little talk around city hall expressing this criticism will almost certainly make it back to the subjects of the criticism, and then the policy issue has been reduced to a they are out to get us issue.

It is natural that an officer who has 19 or 24 years of service with the department, and who needs 30 years of service to retire on state retirement would feel uneasy about an effort to begin requiring that all officers be required to undergo an annual medical examination and demonstrate that they can run a mile or mile and one-half in a certain time period, do sit ups, pull ups, and other types of physical ability tests. Failure to pass the ability test may result in the officer losing his/her job. It should be recognized that a long-time police officer, who is 52 years of age is

not expected to be as physically fit as a 31-year-old officer. The older officer should, however, be able to perform the essential functions of the job.

A major obstacle to physical testing and training is to convince police and firefighters, who may have considerable political clout with certain council members, that physical fitness and training is about protecting the health and safety of the public and the lives of the officers and not about unreasonably terminating an officer’s job because he/she cannot pass a medical or physical ability test. One way to overcome this concern is to develop a physical ability program that requires the participation of every officer, a program that provides an individualized fitness program tailored to each officer, and then give a reasonable time frame to meet basic physical ability requirements. In large departments officers may be transferred to desk jobs where they are not required to respond to emergencies. In smaller departments this is much more difficult, because there are not many desk jobs in small departments. There is, however, the opportunity to transfer officers, who cannot meet the basic physical ability requirements of the job, to another department of the city.

FITNESS TESTS THAT ARE FAIR AND JOB RELATED

In a summer 1999 issue of *Public Personnel Management*, Dan Biddle and Nikki Shepard Sill point out that physical ability tests have undergone much scrutiny in the courts since the 1970’s and that a recent survey of court-disputed police and fire physical ability tests showed a successful defense rate of less than 10 percent. With less than a 10 percent success rate, it is not advisable for a city government to arbitrarily set up physical examination and fitness

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standards, draw a line in the sand, and insist that officers who fail the examination and do not meet the standards must lose their job. It is important to note that cities can develop criteria or standards for medical examinations and physical testing that are job related, and if the testing is task related, the probability of successful defense in the event of a court challenge should be considerably improved.

Since passage of the Americans with Disabilities Act in 1990, medical screening decisions and recommendations must be based on an individual evaluation of the applicant and the actual tasks, physical demands, and working conditions under which the job is performed. It is very difficult to develop and implement a successful physical ability program that is fair to women and minorities. According to Biddle and Sill, physical testing scores that are too lax endanger public safety and those that are too strict may unduly penalize qualified individuals, as well as reduce the payoff to society of having experienced incumbents in these jobs. Setting standards too high could also subject the city to expensive and time-consuming litigation.

Title VII of the Federal Civil Rights Act (42 U.S.C. Section 2000e-2(h)) states that it is not discriminatory employment practice when a professionally developed ability test is administered, as long as that test does not have an adverse impact on a protected class.

The act also prohibits the use of different cut-off scores or any other adjustments based upon race, color, religion, sex or national origin.

Numerous federal regulations have been promulgated to define what is an acceptable ability test.

29 C.F.R. Part 1607, Uniform Guidelines on Employee Selection Procedures provides that if an ability test has a potential for an adverse impact on a protected class, then there must be proof of that test's validity. Physical ability tests must be content validated; it must be demonstrated that the selection procedure is representative of important aspects of performance on the job, for which the officers are to be evaluated. It should be clear that an individual who takes and passes a physical examination can do the job, and an individual who fails to pass the examination cannot do the job.

A medical examination should be part of a physical fitness test. Normally a city will require police and firefighters to undergo a medical examination as part of the initial employment process. The applicant, who has been made a tentative job offer, subject to passing the medical examination, is simply sent to a medical doctor with instructions that he/she is to be given a medical examination. A medical examination that is not job related is probably not adequate. A pass or fail on a medical examination where the doctor has no idea as to the physical or mental job requirements, would be questionable. Some responsible city official—police chief, fire chief, human resources department, city manager/administrator, or mayor—should instruct the medical doctor that the purpose of the medical examination is to determine if the applicant has the physical ability to meet the essential functions of the job. These essential functions should be communicated to the medical doctor.

1. MTAS does not recommend differentiating test scores among males and females. In other words, a city should not establish 80 as a passing score for males and 60 for females.

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- A male applicant who makes 78 on the test and fails by two points, could not become a police officer or a firefighter. A female could make 60 on the test and would be qualified as a police officer or firefighter. Cities are, however, cautioned that the passing score should relate to business necessity.
2. If business necessity requires that police officers and firefighter are required to make a certain score in order to perform the job, then all police officers and firefighters should be required to take the test and achieve the required test score.
 3. It is not advisable to test new applicants and not test current employees. A strategy that might be successful in developing and implementing physical testing for police and fire would be for cities to form a consortium and contribute financially to employ a reputable testing company to develop physical testing. A highly professional testing company would be more likely to prevail if challenged in court.

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